

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Transportation, pursuant to the authority of section 3(b) of Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.02(b)); the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.01 *et seq.*) (“the Act”); Mayor's Order 2003-11, January 16, 2003, and Mayor's Order 2003-173, December 1, 2003), hereby gives notice of the adoption of a new Chapter 37 to the Public Space and Safety Regulations (24 DCMR). Chapter 37, entitled Special Trees, implements the Act, which established an urban forest preservation program requiring a Special Tree Removal Permit prior to the removal of a tree with a circumference of 55 inches or more.

Notices of proposed rulemaking to establish Chapter 37 were published in the D.C. Register on February 6, 2004 (51 DCR 1446), April 30, 2004 (51 DCR 4555), and November 12, 2004 (51 DCR 10471). Comments were received with regard to all versions of the Notices. Pursuant to Section 103(b) of the Act (D.C. Official Code § 8-651.03(b)), the Director submitted the last published version of the proposed rules to the Council of the District of Columbia for review and approval. The Council approved the rules, pursuant to Resolution No. R15-814, on December 21, 2004.

In response to comments received from the public and from Councilmembers during a Council public roundtable held on December 9, 2004, minor, non-substantive revisions have been made to the rules to clarify their intent. In particular, the Department has addressed the concern that the proposed provision pertaining to campus plans and other such proceedings could not be easily found. In response, the final rules provide a stand-alone subsection (§ 3702.4) to address this concern. The provision is intended to clarify that a piece of “private property” may serve as the location on which replacement trees may be planted pursuant to these regulations even though the same trees are planted in accordance with plans approved by another District agency. However, a previously planted tree may not serve as a replacement tree regardless of whether another District agency has approved or required the tree planting.

These final rules will become effective upon publication of this notice in the D.C. Register.

TITLE 24, DCMR, Public Space and Safety, is amended by adding a new Chapter 37 to read as follows:

Chapter 37 SPECIAL TREES**3700 SPECIAL TREE REMOVAL PERMIT**

3700.1 Except as provided in §§ 3700.2 and 3705.1, no person or non-governmental entity shall remove a Special Tree without a Special Tree Removal Permit issued by the Urban Forestry Administration, as provided in the Act.

3700.2 Where the removal of a Hazardous Tree is necessary to avoid imminent harm or danger to persons or property, a person or non-governmental entity may remove a Hazardous Tree without a Special Tree Removal Permit; provided, the person or non-governmental entity shall submit to the Urban Forestry Administration, within fifteen (15) business days after removal of the Hazardous Tree, a permit application for a Special Tree Removal Permit together with a certification by an International Society of Arboriculture certified arborist that the Special Tree was a Hazardous Tree.

**3701 PERMIT APPLICATION PROCEDURES FOR A SPECIAL TREE
REMOVAL PERMIT**

3701.1 A permit application for a Special Tree Removal Permit shall be signed by the owner of the property on which the Special Tree is located and submitted to the Urban Forestry Administration on a form provided by the Urban Forestry Administration. The permit application shall be submitted at least fifteen (15) business days prior to the day that removal of the Special Tree is desired.

3701.2 In addition to such other information as the Urban Forestry Administration may request, the permit application for a Special Tree Removal Permit shall state the address of the property on which the Special Tree is located.

3701.3 If Special Tree removal is sought, in whole or in part, based upon a promise to plant replacement trees pursuant to § 3701.7(b), and the replacement trees will not be planted on the property where the Special Tree is located, the permit application shall contain the following:

- (a) The address of the Private Property where the replacement trees will be planted;
- (b) A statement, signed by the owner of the Private Property on which the replacement trees will be planted, on behalf of the present owners and all future owners of the Private Property, that upon issuance of the Special Tree Removal Permit, the owner of the Private Property on which the replacement trees are to be planted shall:
 - (1) Plant and maintain, or permit the permittee to plant and maintain, the replacement trees in accordance with §§ 3702.2(a) – (e);
 - (2) Allow an inspector of the Urban Forestry Administration reasonable access to the Private Property for twelve (12) months

following the planting of the replacement trees in accordance with § 3702.2(h);

- (3) Comply with all other applicable requirements of this chapter and the terms of the Special Tree Removal Permit, including, but not limited to, § 3702.2(f); and
- (4) Be subject to the imposition of fines, penalties, and fees for any violation of §§ 3701.3(b)(1)-(3).

3701.4 As part of the permit application for a Special Tree Removal Permit, the applicant shall agree to permit an arborist from the Urban Forestry Administration to inspect the proposed Special Tree removal site. The inspection shall occur during the Urban Forestry Administration's normal business hours and prior to issuance of a Special Tree Removal Permit.

3701.5 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the Special Tree to be removed is a Hazardous Tree or is a tree that has been identified pursuant to § 3701.9 as appropriate for removal, a Special Tree Removal Permit shall be issued. A Special Tree Removal Permit issued pursuant to this subsection shall not be suspended or revoked based upon a third party's allegation that the arborist certification was in error.

3701.6 If the applicant elects on the permit application to have an Urban Forestry Administration arborist make the determination set forth in § 3701.5 and the arborist fails to make a determination within forty (40) days after the permit application is submitted, a Special Tree Removal Permit shall be issued.

3701.7 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is not a Hazardous Tree and is not a tree that has been identified in § 3701.9, or if the applicant stipulates as to both on the permit application, no Special Tree Removal Permit shall be issued until the applicant:

- (a) Pays into the Tree Fund a tree replacement fee equivalent to thirty-five dollars (\$35) per inch of circumference of each Special Tree that is to be removed;
- (b) Avers on the permit application for a Special Tree Removal Permit to plant, on Private Property located within the District, as identified on the permit application, and in accordance with §§ 3702.2(a)-(e), a quantity of saplings whose aggregated circumference equals or exceeds the circumference of the Special Tree(s) to be removed; or

- (c) A combination of (a) and (b) so as to account for the circumference of the Special Tree(s) removed.

3701.8 The authority to remove a Special Tree as granted by a Special Tree Removal Permit shall be valid for one hundred eighty (180) calendar days after the date of issuance of a Special Tree Removal Permit.

3701.9 Tree species appropriate for removal are:

- (a) *Ailanthus altissima* (common name-Ailanthus);
- (b) *Morus species* (common name-Mulberry); and
- (c) *Acer platanoides* (common name-Norway maple).

3702 PERMIT CONDITIONS FOR REPLACEMENT TREES

3702.1 The provisions of this section shall apply to any Special Tree Removal Permit issued, in whole or in part, upon the promise of the applicant for the Special Tree Removal Permit to plant replacement trees pursuant to § 3701.7(b).

3702.2 In addition to any other conditions imposed by the Urban Forestry Administration, the following conditions shall apply and be stated on the Special Tree Removal Permit:

- (a) Replacement trees, when planted, shall have a minimum caliper size of two (2) inches;
- (b) The replacement trees shall be properly planted according to the International Society of Arboriculture standards that are in effect at the time of planting;
- (c) The replacement trees shall be planted only during the planting season (October 15 to May 1), except that planting must be completed no later than seven (7) months after the Special Tree is removed, unless construction activity makes planting of replacement trees infeasible, in which case planting of replacement trees shall be completed no later than seven (7) months after construction is finished;
- (d) Replacement trees shall not be of a species listed in § 3701.9;
- (e) For a twelve (12) month period after planting, the replacement trees shall be watered, mulched, and, when appropriate, removed from any tree protection stakes and guy wires;

- (f) A non-hazardous replacement tree shall not be cut down, girdled, broken, or destroyed unless the replacement tree has grown into a Special Tree, and then only if a Special Tree Removal Permit has been issued.
- (g) Not later than thirty (30) days after the replacement trees are planted, the permittee shall mail or hand deliver to the Urban Forestry Administration a certification, signed by the permittee, attesting to the successful planting of the replacement trees; and
- (h) An inspector of the Urban Forestry Administration shall be granted reasonable access to the Private Property where the replacement trees are planted for a period of twelve (12) months following planting.

3702.3 If the replacement trees are not planted on the same property where the Special Tree is located:

- (a) The Special Tree Removal Permit shall include the information and statement provided by the permit application pursuant to § 3701.3(b); and
- (b) The permittee shall record the Special Tree Removal Permit in the land records of the District of Columbia against the Private Property on which the replacement trees are to be planted and mail or hand deliver confirmation of the recorded Special Tree Removal Permit to the Urban Forestry Administration no later than thirty (30) days after the Special Tree Removal Permit is issued, except that this requirement shall not apply where the Private Property is owned by or under the jurisdiction of the District of Columbia.

3702.4 Any Private Property may serve as the location on which a replacement tree may be planted pursuant to this section, regardless of whether that same tree is slated to be planted in accordance with plans approved by another District government agency, including plans approved as part of a campus plan, planned unit development, or historic preservation review process.

3703 ENFORCEMENT AND ADJUDICATION

3703.1 Notices of Infractions for violations of the Act, this chapter, or any condition of a Special Tree Removal Permit shall be issued, answered, and adjudicated pursuant to the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.06 *et seq.*) and the provisions of Chapter 31 of Title 16 of the District of Columbia Municipal Regulations.

3704 SCHEDULE OF FINES

- 3704.1 Any person or non-governmental entity that violates any provision of the Act, this chapter, or any condition of a Special Tree Removal Permit shall be subject to a civil infraction fine of one hundred dollars (\$100) per inch of circumference of the tree or trees in question.

3705 PUBLIC UTILITIES

- 3705.1 Public utility companies regulated by the Public Service Commission may remove Special Trees in connection with utility construction, line maintenance, and emergency work within the District's right-of-way without a Special Tree Removal Permit. Such companies shall comply with the notice requirement set forth in section 105(b) of the Act (D.C. Official Code § 8-651.05(b)) and shall comply with ANSI(a)(300) standards.

3799 DEFINITIONS

- 3799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed below:

Act – the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.01 *et seq.*).

ANSI(a)(300) standards – the American National Standards Institute, Inc. American National Standard Specifications for Standards for Tree Care Operations; Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices

Caliper – the diameter (width) of the trunk of a tree when measured at a height of six inches (6 in.) above the ground/soil.

Circumference – the linear distance around the trunk of a tree when measured at a height of four and one-half feet (4½ ft.) above the ground.

District's right-of-way – all the publicly owned property between the property line on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Hazardous Tree – a Special Tree that should be removed because it is:

- (a) Structurally defective, diseased, dying, or dead;
- (b) Posing a high risk of failure or fracture with the potential to cause injury to people or damage to property: or

- (c) Causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree.

Permittee – a person or non-governmental entity issued a Special Tree Removal Permit by the Urban Forestry Administration.

Person or non-governmental entity – any individual, corporation, firm, agency, association, organization, or utility company.

Private Property – real property, including real property owned or under the jurisdiction of the District of Columbia and real property that is to be developed pursuant to an approved campus plan, planned unit development, or a historic preservation review. This term does not include the District's right-of-way.

Remove – cutting down, topping, girdling, breaking, or destroying a Special Tree.

Replacement tree – A tree planted pursuant to § 3701.7(b).

Special Tree – a tree within the District of Columbia that has a minimum circumference of fifty-five inches (55 in.).

Tree Fund – the fund established under section 107 of the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.07).